

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 135

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO THE IDAHO PRISONER LITIGATION REFORM ACT; AMENDING TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 59, TITLE 19, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE APPLICABILITY, TO DEFINE TERMS, TO PROVIDE THAT THE DEPARTMENT OR SHERIFF SHALL ADOPT ADMINISTRATIVE REMEDIES, TO PROVIDE FOR CIVIL ACTIONS BY A PRISONER, TO PROVIDE LIMITATIONS FOR CIVIL ACTIONS BY A PRISONER, TO PROVIDE FOR A PRISONER SEEKING IN FORMA PAUPERIS STATUS, TO PROVIDE FOR ACTIONS WHERE THE DEFENDANT IS THE STATE OF IDAHO, TO PROVIDE FOR COURTROOM PROCEDURES FOR PRISONER LITIGATION, TO PROVIDE THAT PRISONER RECORDS ARE PROPERTY OF THE DEPARTMENT OR SHERIFF, TO AUTHORIZE AN ATTORNEY FOR A DEFENDANT OR RESPONDENT TO REVIEW PRISONER RECORDS, TO PROVIDE FOR HOW DAMAGES MAY BE AWARDED AND TO PROVIDE SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 59, Title 19, Idaho Code, and to read as follows:

CHAPTER 59

IDAHO PRISONER LITIGATION REFORM ACT

19-5901. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Prisoner Litigation Reform Act."

19-5902. APPLICABILITY. (1) This chapter shall apply to all civil actions for money damages relating to terms and conditions of confinement brought in the courts of this state or for injunctive, declaratory or mandamus relief brought by prisoners incarcerated in any state correctional facility or any county jail.

(2) Nothing in this chapter shall apply to actions brought pursuant to the Idaho rules of criminal procedure or pursuant to title 18, Idaho Code, or any other criminal provision of Idaho Code. Nothing in this chapter shall relieve any complainant from complying with the provisions of the Idaho tort claims act.

19-5903. DEFINITIONS. As used in this chapter:

(1) "Administrative policies" means, as to state or privately run facilities under contract with the department, written policies adopted or approved by the department that establish an internal procedure requiring an inmate to file a written complaint to the department, correctional authorities or any private company or contractor prior to filing a pro se civil action for claims related to the conditions of confinement or the effect of actions by government officials on the lives of prisoners incarcerated in

1 prison. As to county jails, "administrative policies" means written poli-  
 2 cies adopted or approved by the county sheriff that establish an internal  
 3 procedure requiring an inmate to file a written complaint to the sheriff or  
 4 jail authorities prior to filing a pro se civil action for claims related to  
 5 the conditions of confinement or the effect of actions by government offi-  
 6 cials on the lives of prisoners.

7 (2) "Administrative remedies" means all remedies adopted or approved  
 8 by the department or sheriff that address claims of the kind asserted by the  
 9 prisoner.

10 (3) "Department" means the Idaho department of correction.

11 (4) "Prisoner" means any inmate incarcerated in any facility adminis-  
 12 tered by or under contract with the department or in any county jail, ir-  
 13 respective of the inmate's status as a pretrial detainee, sentenced pris-  
 14 oner, probation or parole violator, arrestee or any other class of inmate or  
 15 prisoner, including inmates held under contract with the government of the  
 16 United States or any other county or state.

17 19-5904. ADMINISTRATIVE REMEDIES AND CIVIL ACTIONS BY A PRISONER. (1)  
 18 The department or sheriff shall adopt administrative remedies for prison-  
 19 ers. The administrative remedies shall be readily available to all prison-  
 20 ers.

21 (2) In accordance with section 19-4206, Idaho Code, a prisoner incar-  
 22 cerated by the department or in any county jail may not assert a civil claim  
 23 under state law until the prisoner exhausts all administrative remedies  
 24 available. If a prisoner files a civil action in contravention of the provi-  
 25 sions of this section, the court shall dismiss the action without prejudice.  
 26 If a prisoner establishes to the satisfaction of the court that he is in im-  
 27 minent danger of serious physical injury, the court may choose to forgo the  
 28 exhaustion requirement in this section.

29 (3) The court shall take judicial notice of administrative remedies  
 30 adopted by the department that have been filed with the clerk of the Idaho  
 31 supreme court, or as to county jails, with the clerk of the court of the  
 32 county in which a jail is situated.

33 (4) (a) The court, on its own motion or on the motion of a party, may dis-  
 34 miss any prisoner civil action if the court is satisfied that the action  
 35 is or does any of the following:

36 (i) Frivolous;

37 (ii) Malicious;

38 (iii) Fails to state a cause of action;

39 (iv) Seeks monetary relief from a defendant who is immune from  
 40 such relief; or

41 (v) Fails to state a claim upon which relief can be granted.

42 (b) If the court makes a determination to dismiss an action based on  
 43 the content of the petition, the court may dismiss the underlying claim  
 44 without first requiring exhaustion of administrative remedies avail-  
 45 able to the prisoner.

46 (c) The court, on its own motion, may raise an exception of improper  
 47 venue and transfer the action to a court of proper venue or dismiss the  
 48 action.

1 (5) Any defendant may waive the right to reply to any civil action  
2 brought by any prisoner. Notwithstanding any other law or rule of procedure,  
3 a waiver shall not constitute an admission of the allegations contained  
4 in the petition or waiver of any affirmative defenses available to the de-  
5 fendant. No relief shall be granted to a plaintiff's civil action unless  
6 an answer has been filed. The court may require any defendant to answer a  
7 petition brought under this section if it finds that the plaintiff has a rea-  
8 sonable opportunity to prevail on the merits.

9 (6) (a) In any civil action brought with respect to prison conditions  
10 by a prisoner confined by the department or in any county jail, to the  
11 extent practicable, pretrial proceedings in which the prisoner's par-  
12 ticipation is required or permitted shall be conducted by telephone,  
13 video conference or other communications technology without removing  
14 the prisoner from the facility in which he is currently confined.

15 (b) After providing the parties an opportunity to file supporting and  
16 opposing memoranda, a court may rule on exceptions and motions without  
17 holding a hearing.

18 (c) Hearings may be conducted at the facility in which the prisoner is  
19 currently confined as determined by the court.

20 (d) The court shall allow counsel to participate by telephone, video  
21 conference or other telecommunications technology in any hearing held  
22 at the facility to the extent practicable.

23 (7) No civil action by a prisoner may assert a claim under state law for  
24 mental or emotional injury suffered while in custody without a prior showing  
25 of physical injury.

26 (8) The civil actions of more than one (1) prisoner may not be consoli-  
27 dated, and a prisoner's action that is filed or prosecuted pro se may not as-  
28 sert a class action. If a civil action names more than one (1) plaintiff or  
29 asserts a pro se class action, the actions of any plaintiff, other than the  
30 first named plaintiff, shall be dismissed without prejudice.

31 (9) No prisoner may file a complaint for civil damages more than one (1)  
32 year after the incident or omission complained of or one (1) year after any  
33 administrative remedy has been exhausted, whichever comes later.

34 19-5905. IN FORMA PAUPERIS STATUS.

35 (1) (a) A prisoner seeking in forma pauperis status shall provide the  
36 court with a certified copy of his prisoner money account for the pre-  
37 ceding twelve (12) months.

38 (b) Any prisoner granted leave to proceed in forma pauperis shall repay  
39 any filing fees and pay any taxed costs by making monthly installments,  
40 until fully paid, equal to twenty percent (20%) of the prisoner's aver-  
41 age monthly prisoner money balance for the prior twelve (12) months or  
42 a similarly determined amount if twelve (12) months of account activity  
43 is not available.

44 (c) If the court determines the prisoner has had no deposits in his in-  
45 mate trust account for the preceding twelve (12) months, the court shall  
46 permit the prisoner to proceed without paying the filing fee and costs.

47 (d) In cases where in forma pauperis status is granted, the filing fee  
48 of a civil action shall be taxed to the prisoner at the end of the case.

1 The taxing of costs against a nonprevailing prisoner shall be at the  
2 court's discretion.

3 (e) Any prisoner failing to make any payment when due shall have his  
4 case dismissed without prejudice.

5 (2) The court shall deny in forma pauperis status to any prisoner who  
6 has had three (3) or more pro se civil actions or appeals dismissed by any  
7 federal or state court for being frivolous, malicious or for failure to state  
8 a claim unless the prisoner shows that he is in imminent danger of serious  
9 physical injury at the time of filing his complaint, or the court determines  
10 that it would be manifest injustice to deny in forma pauperis status.

11 19-5906. ACTIONS -- STATE OF IDAHO. (1) In any action in which any de-  
12 fendant is the state of Idaho, or agency thereof, or one (1) of its officers,  
13 employees or agents, upon the grant of in forma pauperis status or receipt of  
14 the filing fee and costs, the prisoner shall serve the office of the attorney  
15 general with a copy of the complaint and all necessary supporting papers. In  
16 any action in which any defendant is a sheriff, county or one (1) of its offi-  
17 cers, employees or agents, upon the grant of in forma pauperis status or re-  
18 ceipt of the filing fee and costs, the prisoner shall serve the office of the  
19 county prosecuting attorney with a copy of the complaint and all necessary  
20 supporting papers. Nothing in this act shall be construed to eliminate the  
21 prisoner's duty under the Idaho rules of civil procedure to personally serve  
22 individual defendants or respondents named as parties.

23 (2) The office of the attorney general or legal representative of the  
24 correctional facility or county shall file responsive pleadings within  
25 sixty (60) days of receipt of the notice.

26 (3) A prisoner's failure to state his claims in a written complaint  
27 plainly stating facts sufficient to support his cause of action, accompanied  
28 by all necessary supporting documentation, may be grounds for dismissal of  
29 the action.

30 19-5907. COURTROOM PROCEDURES FOR PRISONERS. (1) Oral argument on any  
31 motion in any prisoner pro se civil action shall be heard only at the request  
32 of the court. Whenever possible, the court shall rule upon the record before  
33 it.

34 (2) No prisoner shall be permitted to request subpoenas for witnesses  
35 or documents or file discovery requests until the court has ruled upon any  
36 motion to dismiss or other dispositive motion.

37 (3) Where a case proceeds past the initial dispositive motion phase,  
38 the court shall require the prisoner seeking discovery to demonstrate that  
39 his requests are relevant and material to the issues in the case.

40 (4) No subpoena for witnesses or documents shall be issued unless a  
41 judge of the court has reviewed the subpoena request and specifically autho-  
42 rized a subpoena to be issued.

43 (a) The court shall exercise its discretion in determining the scope of  
44 the subpoena and may condition its issuance on such terms as the court  
45 finds appropriate.

46 (b) The court shall take into account the burden placed upon the object  
47 of the subpoena in relation to the needs of the case, the amount in con-  
48 troversy and the importance of the issues at stake in the litigation.

1        19-5908. PRISONER RECORDS. All records maintained by the department  
2 or sheriff in the name of an individual prisoner, including medical records,  
3 shall be the property of the department or sheriff. Nothing in this section  
4 shall prevent the review of any prisoner record by any attorney for the de-  
5 fendant or respondent.

6        19-5909. DAMAGES AWARDED. (1) Damages awarded to a prisoner in connec-  
7 tion with a civil action brought against any prison or county jail or against  
8 any official or agent of such prison or county jail shall be paid directly  
9 to satisfy any outstanding restitution orders pending against the prisoner.  
10 Any remaining amounts shall be forwarded to the prisoner.

11        (2) Prior to payment of any damages, reasonable efforts shall be made  
12 to notify the victims of the crime for which the prisoner was convicted and  
13 incarcerated concerning the pending payment of any damages.

14        19-5910. SEVERABILITY. The provisions of this act are hereby declared  
15 to be severable and if any provision of this act or the application of such  
16 provision to any person or circumstance is declared invalid for any reason,  
17 such declaration shall not affect the validity of the remaining portions of  
18 this act.